寰宇醫事裁判

日本水俣病基於食品衛生法之行政訴訟

The Administrative Action about Minamata Disease in Japan Based on Food Sanitation Act

黃浥昕 Yi-Hsin Huang 編譯 *

平成26年（行ウ）第224號　食品衛生法に基づく水俣病の法定調査等の義務付け行政訴訟等請求事件
平成28年1月27日東京地方裁判所　その他

摘　要

1956年熊本縣水俣市居民，因日本窒素公司排放含汞廢水，致居民中樞神經系統中毒等傷害。日本政府在事件爆發初期的消極不作為，使眾多受害者紛紛透過訴訟維護權益。本件原告即主張熊本縣保健所長、知事與厚生勞動廳未履行食品衛生法之調查與報告義務，迴避了中毒者實際的被害狀況，致使原告不能取得水俣病之受害者資格，進而無法申請補償。東京地方法院駁回原告之訴，認為食物中毒調查報告不具處分性，亦未賦予原告法律上利益，其僅為行政機關內部行為，故不得訴請機關履行義務；同時，原告權

關鍵詞：公害事件（public nuisance incident）、水俣病（minamata disease）、法律上利益（legal interest）、確認訴訟（administrative action for confirming）、課予義務訴訟（administrative action for effecting）
DOI：10.3966/241553062021060056008

利或法律地位尚未明確，即無受確認行政機關違法之法律上利益，亦不得訴請確認機關不作為違法。原告雖主張未作成食物中毒調查報告影響其申請補償的權利，但兩者於法令上並無直接的關聯性，也未有充分證據證明之。

The central nervous system of citizens in Minamata City in Kumamoto Ken were intoxicated and injured in 1956 because Chisso Corporation released methylmercury in the wastewater. At the beginning of the event, Japanese government didn't take any positive actions which lead that many victims turned to litigations to protect their interests. The plaintiff in this case argued that the direct of the health center, the mayor and the Ministry of Health, Labour and Welfare didn't fulfill the duties of investigation and report according to the Food Sanitation Act, avoiding the actual intoxicating situation of the victims which lead them being unable to apply for compensations. Tokyo District Court refused the accusation the plaintiff filed, insisted that the investigation report of food intoxication didn't have any outside effect, neither give any legal interest to the plaintiff. It was just a inside action in the administrative organ. Therefore, the plaintiff was not allowed to claim the organ for fulfilling the duties. Meanwhile, since the legal right and status of the plaintiff were not confirmed, it would be impossible to confirm whether the plaintiff could have any legal interest which came from the unlawful actions of the administration, and couldn't claim for confirm that the omission of the administration was illegal. Even though the plaintiff complained that it would have effects to the right for compensation the plaintiff has that the food poison investigation report was made, there was still no direct relationship between them, nor proof to prove it.

壹、事實概要

一、事件概要

本件為確認水俣病（日語：水俣病）患者基於食品衛生法上之法律關係是否成立之訴訟。水俣病為日本四大公害病之一，實際為汞中毒，於1956年左右發生於熊本縣水俣市，日後依地得名。依所發生地區分為熊本水俣病（俗稱第一水俣病）及新潟水俣病（發生於1966年，俗稱第二水俣病）。直到1968年9月日本政府才承認該病起因於「日本窒素公司」（現更名為「新日本窒素肥料」）工廠任意排放含甲基汞的廢水汙染魚貝類，經人食用後產中樞神經系統中毒現象。日本政府在事件爆發初期的消極不作為，使眾多受害者紛紛透過訴訟維護權益。

原告為熊本縣水俣市之住民，主張水俣保健所長及天草保健所長有基於食品衛生法第52條第2項之義務，應針對其所管轄的區域，從1956年至今因食物中毒導致發生水俣病的患者進行法定調查、向熊本縣知事做出行政報告；熊本縣知事有基於食品衛生法第58條第3項及第5項、向厚生勞動大臣做出行政報告之義務；厚生勞動大臣有基於食品衛生法第60條，要求熊本縣知事於期限內進行法定調查、做出行政報告之義務。以上種種行政機關對「食物中毒調查報告」相關義務的不作為，迴避了中毒者實際的被害狀況，使原告承受精神上的痛苦，提出國賠要求。

本件爭點有三：第一，「食物中毒調查報告」是否具處分性；第二，未做出「食物中毒調查報告」是否屬違法之侵權行為；第三，若屬違法則是否侵害到原告利益。原告主張自身具法律上之利益而處於當事人地位，即倘若被告們有依規定做出「食物中毒調查報告」，經確認為食物中毒的患者就能受到食品衛生法之保障與被認定為受害者；且「食物中毒調查報